IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL (ST.) NO. 11156 OF 2005

IN

B.C.C. SUIT NO. 6098/1999

UTI BANK LTD. ..Appellants.

Versus

Chandresh Kumar Jain ..Respondent.

WITH

FIRST APPEAL (ST.) NO. 11168 OF 2005

IN

B.C.C. SUIT NO. 225/1999

UTI BANK LTD. ..Appellants.

V/s.

Meha C. Jain ..Respondent.

WITH

FIRST APPEAL (ST.) NO.11175 OF 2005

IN

B.C.C. SUIT NO. 224/2000

UTI BANK LTD. ..Appellants.

V/s.

Saroj C. Jain ..Respondent.

Shri Rishabh Shah with Shri Sunil Shah i/by Shukla & Shukla for the Appellants.

Shri H.C.Mehta i/by H.C.Mehta & Co. for Respondent(s).

CORAM : D. G. DESHPANDE,J.

DATE : 20TH JUNE, 2005

P.C. :

1. Parties in all these matters, that the Appellant is common. Issue involved is same and therefore, common order is passed.

2. The Appellant Bank has challenged the decree passed against it for an amount as payable to the plaintiff -respondent in respect of the demand draft issued to the plaintiff by the Appellant Bank. The demand draft came to be lost in transit. No one claimed the amount under the said demand draft till the suit was filed. The plaintiff waited for 6/7 months and then lodged the claim with the Bank, which was refused and hence, the plaintiff was required to file

the suit.

3. The defence of the Appellant Bank was that they are not liable to pay any amount to the plaintiff because the draft was issued at the instance of CRB, who was not a party to the suit. That defence was negatived by the court below and decree came to be passed in favour of the plaintiff. Counsel for the appellant contended that they are not liable to pay the amount to the plaintiff even though the draft was in his name and he was the holder of the draft because the draft was not presented by the plaintiff for encashment and since the draft was lost, it was only CRB Capital Market Ltd., who were entitled to get the amount. He also contended that there was no privity of contract between the plaintiff and the Bank and that if such kind of decrees are passed, then it will open flood-gates against the bank, making it liable to pay in all cases in such circumstances. I do not find any merit in the submission. The plaintiff was one of the investors with the CRB Capital Market Ltd.. He has invested Rs. 9000/-, so far as Appeal (St.) No. 11156/2005 is concerned, in fixed deposit. The CRB Market had issued a receipt to the plaintiff and after maturity of the said deposit, the CRB Market issued a valid demand draft, drawn on UTI Bank - the Appellant, for the said amount. The draft was lost in transit. Nobody presented the draft within six months of

statutory period. Nobody collected the amount from any Bank and therefore, the plaintiff lodged his claim and filed the suit. In the circumstances, when the draft was issued by CRB Capital Market or at the instance of the CRB Capital Market through UTI Bank, in the background stated above, and when the draft was lost and the plaintiff could not get that amount, the Bank was rightly held liable to pay the amount. There is no question of opening flood-gates by maintaining the decree.

4. In fact, after the demand draft was lost, the plaintiff waited for six months and then issued a notice, claiming demand of the said amount. Objection to limitation was raised but that was not pressed by the counsel for the appellants. The trial court rightly held that when the plaintiff has deposited the amount with CRB and on maturity the CRB had issued the demand draft through the Appellant Bank and when the draft was lost, the Appellant was rightly liable to pay the amount. The Bank has already made enquiry with its branch at Rajasthan and got confirmation that the draft was not presented for realisation by anybody.

5. A division bench judgement of this court, reported in **1976 Mh.L.J. 185** in the case of Tukaram Bapuji Nikam vs. Belgaum Bank Ltd., was cited before me. The division bench held as under -

"The relationship of the purchaser of a draft and the Bank from which it has been purchased is merely that of a debtor and creditor. The purchaser of the draft can, therefore, call upon the Bank to cancel the draft and pay back the money to him at any time before the draft has been delivered to the payee. If, however, the sole object of the issue of the draft was to transmit the money to another person, a fiduciary relationship is created between the purchaser of the draft and the Bank which issued it and the purchaser of the draft can countermand payment only if the Bank has not actually parted with the money held by it as an agent, thus terminating the relationship of principal and agent. Ordinarily, a Bank cannot refuse to pay the amount of the draft unless there was some doubt as to identity of the person presenting it as being or properly representing the person in whose favour it was drawn, or, in other words, unless there is reasonable ground for disputing the title of the person presenting the draft. Once the draft has-been delivered to the payee or his agent the purchaser is not entitled to ask the issuing Bank to stop payment of the draft to the payee on other grounds such as matters

relating to consideration and the issuing Bank can thereafter pay back the amount of the draft to the purchaser thereof only with the consent of the payee."

and ultimately came to the conclusion that the Bank was not entitled to refuse to pay the amount of the draft to the plaintiff. In view of this judgement and for the reasons stated above, there is no merit in any of these Appeals. Hence, I pass the following order.

ORDER

. All the Appeals are dismissed.

. The appellant to remove office objections within three weeks positively without fail and the Appeals be numbered thereafter.

20.06.2005 (D.G. DESHPANDE,J.)

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